

COURT MINUTES OF EVIDENTIARY HEARING

UNITED STATES OF AMERICA

v.

CASE NO. 14-CR-159

RANDY M. YAGER

HON. J. P. STADTMUELLER PRESIDING

DATE: December 23, 2015

TIME SCHEDULED: 10:30 a.m.

COURT CLERK: Carla Baumel

TIME CALLED: 10:31 a.m.

COURT REPORTER: Sheryl Stawski

TIME FINISHED: 12:11 p.m.

PURPOSE: Evidentiary Hearing

PLAINTIFF BY: Carol Kraft, Scott Campbell, and Laura Kwaterski

DEFENDANT BY: Stephen Hurley

Notes:

10:31 a.m. Appearances. The Court explains basis of the evidentiary hearing.

10:33 Mr. Campbell makes opening statement on behalf of the government; refers to government's Exhibit 1.

10:36 Defense counsel makes brief statement; moves to exclude witnesses from the Courtroom.

10:37 Government calls witness: John C. Morrow.

10:38 Mr. Morrow sworn in by Court.

10:38 Government begins direct examination of Mr. Morrow.

10:46 Government hands to witness Exhibits 2, 3, 4 and 5 and asks witness questions about the contents of these exhibits.

10:47 Government moves to introduce into evidence Exhibits 2, 3, 4, and 5.

10:47 Defense counsel asks to reserve admission for cross examination.

10:47 Court asks Mr. Morrow, through the course of his testimony, to describe what aspects of the photographs in Exhibits 2, 3, 4, and 5 appear different from how they appeared on the date of the incident in question, September 25, 1994.

10:48 Government hands Mr. Morrow Exhibit 1; moves to admit Exhibit 1.

10:49 Defense counsel has no objections.

10:49 Government also moves to admit blow-up of Exhibit 1.

10:49 Court receives Exhibit 1 and the enlargement thereof.

10:50 Government references Exhibit 2, 3, 4, and 5 while continuing line of questioning to Mr. Morrow.

10:52 Government calls up Exhibit 2.

10:53 Government calls up Exhibit 3.

10:55 Government calls up Exhibit 4. Government would like to amend designation of the
enlargement of Exhibit 1 as Exhibit 1A; continues questioning Mr. Morrow.

10:58 Defense counsel objects on grounds of relevance.

10:58 Overruled.

11:00 Government calls up Exhibit 5.

11:02 Government shows to Mr. Morrow Exhibits 8, 9, and 10.

11:03 Government moves to admit Exhibit 8 into evidence.

11:03 Defense counsel asks to reserve until cross examination.

11:03 Court grants defense counsel's request.

11:03 Government asks if it may continue to publish.

11:03 The Court will so allow.

11:04 Defense counsel objects to witness testimony.

11:04 Court will allow testimony

11:05 Government references Exhibits 9 and 10.

11:05 Government moves to introduce Exhibits 9 and 10 into evidence.

11:05 Defense asks to reserve ruling until cross examination.

11:06 Court will reserve its ruling until cross-examination.

11:06 Government calls up Exhibit 9.

11:07 Government calls up Exhibit 10.

11:08 Government references Exhibit 11.

11:09 Government offers Exhibit 11 into evidence.

11:10 Defense counsel asks to reserve until cross examination.

11:10 Court grant's defense counsel's request.

11:10 Government asks to continue with publication of Exhibit 11.

11:10 Court will allow publication.

11:11 Government references Exhibit 6; publishes Exhibit 6. Government offers Exhibit 6 in evidence.

11:12 Defense counsel has no objection.

11:12 Court admits Exhibit 6.

11:14 Government references Exhibit 7.

11:14 Government offers Exhibit 7 into evidence.

11:14 Defense counsel has no objections

11:14 Court admits Exhibit 7; government continues questioning.

11:17 Government again offers Exhibit 7

11:17 Court will receive Exhibit 7.

11:17 Government concludes direct examination.

11:17 Defense counsel begins cross examination of Mr. Morrow.

11:19 Defense counsel references Exhibit 1A.

11:24 Defense counsel shows to Mr. Morrow what has been labeled as Exhibit 21. Asks witness to
turn to 5588; resume questioning at line 13; instructs witness to turn to 5593; commencing on
line 19, resumes questioning.

11:29 Defense counsel offers into evidence page 5593 of Exhibit 21.

11:29 Government objects.

11:29 Court overrules; Court receives page 5593 of Exhibit 21 into evidence.
11:30 Government requests page 5594 of Exhibit 21 be admitted for completeness.
11:30 Court grants government's request.
11:31 Defense counsel provides to witness Exhibit 20; continues questioning.
11:33 Government makes objection to form.
11:33 Court requests clarification of the question.
11:33 Government makes objection.
11:34 Court asks defense counsel to use map to clarify the question.
11:35 Defense counsel refers to Exhibit 7.
11:36 Defense counsel provides to witness copy of New York statutes
11:37 Government inquires as to whether this is the statute in force at the time of the traffic stop.
11:37 Defense counsel believes so.
11:37 Court wants to ensure this was the operative provision during the date in question. Asks witness he remembers.
11:37 Witness asks for time to read the statute; states that his memory is refreshed.
11:38 Government resumes questioning.
11:40 Asks for Exhibit 7 to be published and resumes questioning.
11:41 Defense counsel marks 35 and shows what has been marked as Exhibit 35 to the witness; resumes questioning.
11:42 Government objects.
11:43 Defense counsel moves for entry into evidence of Exhibit 35.
11:43 Court receives Exhibit 35.
11:44 Defense counsel references Exhibit 2.
11:44 Defense counsel references Exhibit 3.
11:44 Defense counsel references Exhibit 4.
11:45 Defense counsel references Exhibit 5.
11:47 Defense counsel references Exhibit 8.
11:48 Defense counsel references Exhibit 9.
11:49 Defense counsel references Exhibit 10.
11:50 Defense counsel references Exhibit 11.
11:52 Government objects to questioning.
11:52 Defense counsel continues questioning.
11:54 Objection relevance.
11:55 Government begins re-direct. Government references Exhibit 1A.
11:57 Government references Exhibit 21 at pages 5593 and 5594.
12:03 Governments rests on re-direct.
12:03 Defense counsel asks witnesses questions on re-cross examination.
12:04 Government objects.
12:06 Court receives Exhibit 1, 1A, 1-6, and 7-11.
12:06 Defense counsel moves to Exhibit 35; the Court receives.
12:07 Court inquires as to whether the parties want to submit written argument.
12:07 The defense counsel seeks written argument.

12:08 The Court will provide defense counsel 10 days to submit written argument; the Court directs the Court Reporter to publish the written transcript of this trial not later than January 8, 2016; therefore meaning submission is due on the January 18, 2016; the government's submission will be due on January 28, 2016. Decision will be made by February 10, 2016. The Court states that it will hold a trial scheduling conference in February; parties are advised that Court is also planning to impanel the jury on Monday, April 4 in light of the Easter Holiday. Lastly, the Court also notes disparity of terms of the "Silver Creek" and "Silver Lake" used in the parties' filings; as it has now been clarified that this incident occurred in Silver Creek, NY, and the Court notes that correction on the record.

12:11 Court stands in recess.